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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
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Draft instrument against illegal trafficking in and transporting of migrants

Revised draft Protocol against the Smuggling[1] of Migrants by Land, Air and Sea,[2] supplementing the United Nations Convention against Transnational Organized Crime[3, 4]

[1] The term "smuggling" is used throughout the text in the light of action taken by the General Assembly at its fifty-fourth session on the recommendation of the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council. During the discussion at the first session of the Ad Hoc Committee, several delegations raised the issue of the translation of the term "smuggling" into languages other than English and the problems that it created. Attention will, therefore, be paid to identifying the appropriate term to be used in languages other than English. That will be done in the glossary of terms that the Secretariat is currently preparing. Existing texts on the subject, such as General Assembly resolutions 48/102 and 51/62 and Economic and Social Council resolution 1995/10, might be useful in this regard. The Ad Hoc Committee will reconsider this matter at a future session. When agreement is reached on the wording of the title, the terminology will be adjusted in provisions throughout the text, as necessary.

[2] In its resolution 53/111, the General Assembly requested the Ad Hoc Committee to discuss the elaboration of an international instrument addressing illegal trafficking in and transporting of migrants, including by sea. The Ad Hoc Committee at its first session was of the view that focusing on illegal trafficking and transporting by sea would be too restrictive.

[3] The text of the draft Protocol is based on the original proposal of Austria and Italy (A/AC.254/4/Add.1), with subsequent modifications as noted.

[4] At the sixth session of the Ad Hoc Committee, it was noted during the deliberations on the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Trafficking in Persons Protocol) that the words "each State Party" and "States Parties" were used interchangeably in the text. The Committee decided to adopt the term "States Parties" throughout the text. For consistency, the same change has been made here, where possible.

V.99-91216 (E)

Preamble[5]

The States Parties to this Protocol,

[(a) *Taking note* of the United Nations Convention against Transnational Organized Crime,]

(b) *Concerned* about the rapid development of the smuggling of migrants,

[(c) *Alarmed* by the significant increase in the activities of transnational criminal organizations that make illicit profits by smuggling migrants across national boundaries,]

[(d) *Recognizing* that transnational criminal organizations also use the smuggling of migrants to further numerous other criminal activities, thus bringing great harm to the States concerned,]

(e) *Concerned* that the smuggling of migrants may lead to the misuse of established procedures for immigration, including those for seeking asylum,[6]

[(f) *Also concerned* that the smuggling of migrants can endanger the lives or security of the individual migrants involved and entails great expense for the international community, including the costs of rescue, medical care, food, housing and transportation,]

[(g) *Reaffirming* that States should give high priority to preventing, combating and eradicating the smuggling of migrants because of the links of such activity with transnational organized crime and other criminal activities,]

[(h) *Convinced* that combating the smuggling of migrants requires international cooperation, the exchange of information and other appropriate measures at the national, regional and global levels,]

(i) *Also convinced* that, to counter this phenomenon, a global approach, including socio-economic measures, is necessary,

(j) *Further convinced* of the need to provide migrants with humane treatment and full protection of their human rights,

(k) *Convinced* of the need for a comprehensive international legal instrument to combat all aspects of the transnational smuggling of migrants by land, air and sea,

(l) *Stressing* the importance of full compliance by States with their obligations under the provisions of the 1951 Convention[7] and the 1967 Protocol,[8] and affirming that the present Protocol does not affect the protection afforded under the terms of the 1951 Convention and the 1967 Protocol and other provisions of international law,

(m) *Recalling* the work of the International Maritime Organization concerning unsafe practices associated with trafficking in or transporting of illegal migrants by sea, in particular the work of the Maritime Safety Committee, which approved the interim

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[5] Several delegations were of the view that the preamble should contain provisions to address the underlying causes of the illegal movement of people and to reaffirm the principle of free movement of people. Most delegations were of the view that it would be most useful to consider the preamble after the finalization of the text of the substantive articles.

[6] Several delegations were of the view that the question of refugees should also be addressed (see paragraph 2 of article 5 below).

[7] United Nations, *Treaty Series*, vol. 189, No. 2545.

[8] Ibid., vol. 606, No. 8791.

measures for combating unsafe practices associated with the trafficking or transport of migrants by sea,[9]

(n) [*Text on decisions of the International Civil Aviation Organization to be added*],

[(o) *Reaffirming* respect for the sovereignty and territorial integrity of all States, including their right to control immigration flows,]

(p) *Desiring* to supplement the United Nations Convention against Transnational Organized Crime by a protocol directed specifically against the smuggling of migrants, as a first step towards the eradication of this crime,[10]

[(q) *Declaring* that such an instrument must concentrate on crime prevention and criminal justice, in particular the activities of those who organize and facilitate the smuggling of migrants,]

Have agreed as follows:

I. General provisions relating to the smuggling of migrants by land, air and sea

Option 1

Article 1

Relation to the United Nations Convention against Transnational Organized Crime

This Protocol supplements the United Nations Convention against Transnational Organized Crime (hereinafter referred to as "the Convention"), done at [...], and, as regards the States Parties to this Protocol, those two instruments shall be read and interpreted together as one single instrument.[11]

[9] One delegation suggested that the International Maritime Organization circular containing the interim measures (MSC/Circ.896) could be a useful source of inspiration, but that the drafting of the text of the present instrument should not necessarily be conditioned by that circular.

[10] One delegation suggested that the preamble should be supplemented with provisions stressing the effects of illegal trafficking or smuggling on national security, as well as the need to strengthen cooperation and coordination between States.

[11] For the discussion on the relationship between the draft Convention and the international instruments whose drafting has been entrusted to the Ad Hoc Committee pursuant to General Assembly resolutions 53/111 and 53/114, see also the report of the Ad Hoc Committee on its first session (A/AC.254/9). At the fourth session of the Ad Hoc Committee, some delegations expressed their preference for option 1 over option 2, while other delegations were of the view that it was too early to decide which option to take. One delegation suggested that the principle of *mutatis mutandis* application, as reflected in option 2, should be included in the text of option 1. Another delegation suggested that the article should be moved to the chapter on final provisions.

Option 2

Article 1

Application of the United Nations Convention against Transnational Organized Crime

The provisions of articles [...] of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as "the Convention"), done at [...], shall also apply *mutatis mutandis* to this Protocol.

Article 2[12]

Definitions

1. For the purposes of this Protocol, the following definitions shall apply:

(a) "Smuggling of migrants" shall mean the intentional procurement[13] for profit[14] of the illegal entry[15] of a person into and/or illegal residence[16] of a person in a State of which the person is not a national or a permanent resident;[17, 18]

(b) "Illegal entry" shall mean the crossing of borders without complying with the necessary requirements for legal entry into the receiving State;

(c) "Illegal residence" shall mean residence in the territory of a State without complying with the necessary requirements for legal residence in the State concerned;[19]

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[12] The articles on definition (article 2) and purpose (article 3) will need to be reviewed in the light of choices made with regard to options that appear later in the text. In addition, those articles will need to be reviewed to ensure their consistency with the draft Convention.

[13] One delegation considered the concept of "procurement of illegal entry" to be problematic. In the view of that delegation, it would be better to make reference to complicity in and aiding and abetting the violation of national migration laws. At the fourth session of the Ad Hoc Committee, one delegation suggested that the words "intentional procurement" should be replaced by the words "intentional and repeated procurement" or, alternatively, by "intentional and organized procurement"; however, other delegations opposed that suggestion.

[14] At the fourth session of the Ad Hoc Committee, one delegation suggested replacing the word "profit" by the words "proceeds of crime". Some delegations suggested deleting the word "profit", while other delegations were in favour of retaining it. At the informal consultations held during the fifth session of the Ad Hoc Committee, some delegations suggested that the element of profit should be transferred to article 4, paragraph 5, relating to aggravating circumstances. If the word "profit" would be subsequently deleted from the text, the definition of "profit" in subparagraph 1 (d) of this article would also be deleted.

[15] At the informal consultations held during the fifth session of the Ad Hoc Committee, suggestions were made regarding the replacement of the words "illegal entry" by the words "irregular or non-documented entry" or, alternatively, the replacement of the word "illegal" by the word "irregular". Several delegations expressed concern that "irregular" did not cover the same conduct as "illegal".

[16] At the fourth session of the Ad Hoc Committee and at the informal consultations held during the fifth session of the Ad Hoc Committee, some delegations suggested deleting the words "illegal residence"; however, others were in favour of retaining those words.

[17] At the fourth session of the Ad Hoc Committee, one delegation suggested deleting the words "of a person in a State of which the person is not a national or a permanent resident".

[18] At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested adding the phrase "or any other procedure for an illegal stay in violation of the national law of a State Party" at the end of this subparagraph.

[19] At the fourth session of the Ad Hoc Committee, some delegations suggested deleting this subparagraph if the words "illegal residence" were to be deleted from subparagraph 1 (a) of this article (see also footnote 15 above).

(d) "Profit" shall mean any property, benefit or advantage obtained directly or indirectly[20] as a result of the smuggling of a migrant,[21] including the expectation of or future participation in criminal[22] activities by the migrant;[23, 24]

(e) "Fraudulent travel or identity document"[25] shall mean any travel or identity document:[26]

(i) That has been made, falsified or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

(ii) That has been improperly issued[27] or obtained through misrepresentation, corruption,[28] duress or other unlawful manner;[29] or

(iii) That is being used by a person other than the rightful holder;[30]

(f) "Vehicle" shall mean any conveyance that may be used for transportation by land or air;[31] and

(g) "Vessel" shall mean every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.[32]

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[20] At the fourth session of the Ad Hoc Committee, one delegation suggested deleting the rest of this subparagraph after the word "indirectly".

[21] At the fourth session of the Ad Hoc Committee, the deletion of the words "as a result of the smuggling of a migrant" was suggested.

[22] At the fourth session of the Ad Hoc Committee, some delegations suggested replacing the word "criminal" by the word "illegal".

[23] At the fourth session of the Ad Hoc Committee, several delegations suggested that the definition of "profit" should reflect the discussions of the Ad Hoc Committee on article 2 *bis* of the Convention regarding financial or other material benefit.

[24] At the fourth session of the Ad Hoc Committee, some delegations suggested deleting the words "including the expectation of or future participation in criminal activities by the migrant".

[25] At the fourth session of the Ad Hoc Committee, some delegations suggested that the draft Protocol should not contain definitions of fraudulent travel or identity documents.

[26] At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested either deleting this subparagraph or moving it to article 4, while other delegations were in favour of retaining it.

[27] At the fourth session of the Ad Hoc Committee, one delegation suggested that the word "altered" should be inserted after the word "issued".

[28] At the fourth session of the Ad Hoc Committee, some delegations suggested deleting the word "corruption".

[29] At the fourth session of the Ad Hoc Committee, one delegation suggested deleting this subparagraph.

[30] At the fourth session of the Ad Hoc Committee, some delegations suggested deleting this subparagraph, while another delegation recommended moving it to article 4.

[31] At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation raised questions about the content of the term "vehicle". Another delegation suggested that the word "aircraft" should be defined separately.

[32] The source of the definition of "vessel" is the definition of "ship" provided in paragraph 2 of the interim measures (MSC/Circ.896, annex). At the fourth session of the Ad Hoc Committee, several delegations suggested that, for the wording of the interim measures, the United Nations Convention on the Law of the Sea should be applied. It was also suggested that the words "naval auxiliary or other vessel owned or

2. For the purposes of this Protocol, each State Party shall consider the illegal entry into or illegal residence in the territory of any other State Party equal to illegal entry into or illegal residence in its own territory.[33]

Article 3[34]

Purposes

The purposes of this Protocol are:

(a) To establish the smuggling of migrants as a criminal offence under the respective national laws of States Parties [, when involving an organized criminal group,[35] as defined in the Convention]; and

(b) To promote and facilitate cooperation among States Parties to prevent, investigate and prosecute the crime of smuggling migrants.[36]

Article 4

Criminalization

Option 1[37]

1. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as a criminal offence the smuggling of

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operated by a Government and used, for the time being, only on government non-commercial service" should be replaced by the words "or any other government ship".

[33] At the fourth session of the Ad Hoc Committee, one delegation suggested that this subparagraph should be either deleted or moved to article 4 (Criminalization) or article 6 (Jurisdiction). At the informal consultations held during the fifth session of the Ad Hoc Committee, several delegations stated that this paragraph needed to be clarified.

[34] See footnote 9 above. Some delegations were of the view that the Ad Hoc Committee would need to consider whether to link the offences covered by this Protocol with organized crime and, if so, how.

[35] At the informal consultations held during the fifth session of the Ad Hoc Committee, it was recommended to replace the words "when committed in the context of transnational organized crime", contained in the previous version of the draft Protocol (A/AC.254/4/Add.1/Rev.2), with the words "when involving an organized criminal group". This formulation is provisional, as it will depend on the outcome of negotiations regarding definitions in the draft Convention (see also footnote 11 above).

[36] At the fourth session of the Ad Hoc Committee, some delegations suggested that the words "when life, safety or freedom of the migrant is at risk" be inserted after the word "migrants". Some delegations suggested that this subparagraph should be focused on the prevention, investigation and prosecution of the smuggling of migrants by organized criminal groups. It was also suggested that this subparagraph should be moved before subparagraph (a) of this article. It was further suggested that the words "as well as to protect the victim of such smuggling, including their human rights" should be inserted at the end of this subparagraph. This last matter was also discussed during the informal consultations held during the fifth session of the Ad Hoc Committee. The delegation of Mexico suggested that the protection of victims should be included either in this article or as a new article 1 *bis* (see also A/AC.254/L.61). Several delegations supported the proposal, while other delegations considered that human rights should be covered under article 5. One delegation suggested that, as an alternative, subparagraph (b) of this article could be combined with article 5.

[37] At the informal consultations held at the fifth session of the Ad Hoc Committee, the majority of the delegations were in favour of deleting this option, while one delegation suggested retaining paragraph 1 of this option.

migrants[38] [, when committed in the context of transnational organized crime, as defined in the Convention].[39]

2. States Parties that have not yet done so shall[40] adopt the necessary legislation or other measures to establish as a criminal offence [, when committed in the context of transnational organized crime, as defined in the Convention]:[41]

(a) The intentional making, procuring or providing of a fraudulent travel or identity document; and

(b) Knowing that a travel or identity document is fraudulent:[42]

(i) Using, possessing,[43] dealing with or acting on[44] such a document; and

(ii) Causing a fraudulent travel or identity document to be used, possessed, dealt with or acted on.

Option 2[45]

1. States Parties that have not yet done so shall adopt the necessary legislative or other measures to establish the following conduct as criminal offences when committed by an organized criminal group:

(a) The smuggling of migrants; and

(b) The intentional:[46]

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[38] One delegation suggested that not only individuals but also legal entities (legal persons) should be covered because of the potential involvement of travel companies or corporations.

[39] This formulation is provisional, as it will depend on the outcome of the negotiations regarding definitions in the draft Convention (see also footnote 11 above). At the fourth session of the Ad Hoc Committee, many delegations suggested removing the brackets so as to stress that the Protocol should commit States Parties to criminalizing the smuggling of illegal migrants only in the context of transnational organized crime. Other delegations preferred to retain the brackets on the grounds that there was no definition of transnational organized crime in the Convention. At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested that the words "transnational organized crime" should be kept in brackets and that the words "organized criminal group" should be inserted in brackets next to those words.

[40] At the fourth session of the Ad Hoc Committee, one delegation suggested replacing the word "shall" by "may".

[41] This formulation is provisional, as it will depend on the outcome of the negotiations regarding definitions in the draft Convention (see also footnote 11 above). At the fourth session of the Ad Hoc Committee, many delegations suggested removing the brackets, while some preferred to retain them (see footnote 38 above). Several delegations suggested merging paragraph 2 with paragraph 1 of this article, while one delegation recommended moving this paragraph to article 2. Another delegation suggested deleting this paragraph.

[42] At the fourth session of the Ad Hoc Committee, many delegations suggested that this subparagraph be deleted, while other delegations suggested adding the phrase "for the purpose of smuggling another person across borders".

[43] At the fourth session of the Ad Hoc Committee, one delegation suggested inserting the word "trading" after the word "possessing".

[44] At the fourth session of the Ad Hoc Committee, one delegation suggested deleting the words "dealing with or acting on".

[45] At the fourth session of the Ad Hoc Committee, South Africa suggested including this wording as an option in the main body of the text, in order to combine paragraphs 1 and 2 of this article.

[46] At the informal consultations held during the fifth session of the Ad Hoc Committee, several delegations suggested that this subparagraph should clearly link such conduct to the organized criminal group so that the migrants would not be criminalized. One delegation suggested deleting this subparagraph.

(i) Making, procuring or providing of a fraudulent travel or identity document;

(ii) Using, possessing,[47] dealing with or acting on such a document; or

(iii) Causing such a document to be used, possessed, dealt with or acted on, for the purpose of smuggling migrants.[48, 49]

3. Each State Party shall also adopt the necessary legislation or other measures to establish as a criminal offence the following conduct:

(a) Attempting to commit an offence set forth in paragraphs 1 and 2 of this article;[50]

(b) Participating as an accomplice[51] in an offence set forth in paragraphs 1 and 2 of this article;[52]

(c) Organizing or directing others to commit an offence set forth in paragraphs 1 and 2 of this article;[53] or

[(d) In any other way contributing to the commission of an offence set forth in this article by a group of persons acting with a common purpose; such contribution shall be intentional and shall either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned].[54]

4. States Parties shall make the commission of the offences in this article liable to sanctions that take into account the grave nature of the offences.

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[47] At the informal consultations held during the fifth session of the Ad Hoc Committee, some delegations suggested that merely "possessing" such a document should not be criminalized.

[48] At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested rephrasing this subparagraph to read as follows: "Causing a third party to use, possess, deal with or act on such a document for the purpose of smuggling migrants".

[49] At the informal consultations held during the fifth session of the Ad Hoc Committee, several delegations supported the proposal submitted by Canada and the United States (A/AC.254/L.76). The proposals submitted by India (A/AC.254/L.58) and the Russian Federation were also supported by several delegations. The proposal by the Russian Federation read as follows: "States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as criminal offences the activities of organized criminal groups relating to the organization, procuring and actual effectuation of the smuggling of migrants."

[50] At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested combining subparagraphs 3 (a), (b) and (c).

[51] At the fourth session of the Ad Hoc Committee, one delegation suggested deleting the words "as an accomplice". At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation opposed the deletion of those words.

[52] Some delegations were of the view that, notwithstanding paragraph 6 of this article, the concept of participation required clarification.

[53] At the fourth session of the Ad Hoc Committee, some delegations suggested inserting the words "or attempting to commit such an offence" after the word "article" and deleting subparagraph (a).

[54] This subparagraph was proposed by the delegations of Canada and the United States. The language is taken from article 2, paragraph 3 (c), of the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex) and is intended to ensure that the Protocol will be broad enough to encompass both conspiracy and participation in a criminal organization. At the informal consultations held during the fifth session of the Ad Hoc Committee, some delegations stated that this subparagraph needed to be clarified.

Option 1[55]

5. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as an aggravating circumstance the smuggling of migrants in circumstances that endanger, or are likely[56] to endanger, the life or safety of persons whose illegal entry is procured or intended.[57]

6. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as an aggravating circumstance the exploitation or inhuman or degrading treatment of persons whose illegal entry is procured or intended.[58]

Option 2

5. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as an aggravating circumstance the smuggling of migrants in circumstances:

(a) That endanger, or are likely to endanger, the life or safety of persons whose illegal entry is procured or intended; or

(b) That entail inhuman or degrading treatment[59] of such persons.[60]

Option 1

7. A person whose illegal entry and/or illegal residence is procured or intended by the smuggling of migrants shall not become punishable under this Protocol.[61]

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[55] At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement that this option should be deleted.

[56] At the fourth session of the Ad Hoc Committee, one delegation suggested inserting the word "reasonably" before the word "likely".

[57] At the fourth session of the Ad Hoc Committee, one delegation suggested that repeated commission of the offence of the smuggling of migrants should be included as an aggravating circumstance.

[58] At the fourth session of the Ad Hoc Committee, some delegations drew attention to the fact that this subparagraph might overlap with provisions of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3/Rev.2).

[59] At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested inserting the words "and smuggling of" after the word "treatment", while other delegations opposed the insertion of those words.

[60] At the fourth session of the Ad Hoc Committee, Austria suggested including this wording as an option in the main body of the text, in order to combine paragraphs 5 and 6 of this article. At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested that the element of "exploitation" in option 1 should be included in option 2.

[61] Some delegations expressed concern that this paragraph might interfere with the operation of national immigration laws. At the fourth session of the Ad Hoc Committee, several delegations stressed that, in their view, this provision was important and that all other provisions of the draft Protocol should therefore be consistent with this provision. It was emphasized that the goal of the Protocol would be to function as an instrument that would enable States to effectively prosecute smugglers. In this context, it was evident that criminalization of the migrant would not be intended or desirable. However, several delegations were apprehensive about the possibility of the Protocol granting immunity to illegal migrants, especially if they had committed a crime, including the smuggling of other illegal migrants.

Option 2[62]

7. A person whose illegal entry and/or illegal residence is procured or intended by the smuggling of migrants shall not become punishable [under this Protocol].[63, 64]

7 *bis*. Nothing in this Protocol shall prevent a State Party from taking action against a person whose conduct constitutes an offence under [its domestic law or][65] any other provision on criminalization of this Protocol.

Article 5

Scope of application

1. This Protocol applies to the smuggling of migrants when committed in the context of organized crime as defined in article 2 of the Convention.[66]

2. The provisions of this Protocol shall be without prejudice to the obligations of States Parties under the 1951 Convention[67] and the 1967 Protocol[68] relating to the Status of Refugees.[69]

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[62] The text of this option was not discussed at the fourth session of the Ad Hoc Committee. However, there was extensive discussion of the subject among interested delegations, the results of which are reflected in the text and the relevant footnotes.

[63] Some delegations thought that reference to the Protocol would be inconsistent with the agreed intention of paragraph 7 *bis* of this option, which is to permit prosecution of those migrants who participated in criminal activities, such as the smuggling of migrants.

[64] At the informal consultations held during the fifth session of the Ad Hoc Committee, several delegations suggested replacing paragraph 7 with the proposal submitted by Canada (A/AC.254/L.59), which the United States amended by inserting "(a)" after the words "paragraph 1" and by inserting the words "or taking any other action against" after the word "prosecuting". Several other delegations supported the proposal submitted by France (A/AC.254/L.77). A proposal submitted by Morocco (A/AC.254/L.60) was also supported by several delegations.

[65] Some delegations considered this phrase to be inconsistent with the agreed intention of paragraph 7 of this option in that the phrase, according to their interpretation, would allow domestic legal provisions that criminalize illegal entry to override the Protocol caveat that migrants per se should not be subject to sanctioning.

[66] See footnote 11 above.

[67] United Nations, *Treaty Series*, vol. 189, No. 2545.

[68] Ibid., vol. 606, No. 8791.

[69] At the fourth session of the Ad Hoc Committee, some delegations suggested the inclusion in article 5 of a savings clause similar to that contained in article 15 of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Other delegations recommended placing such a savings clause at the end of this draft Protocol. One delegation suggested including the principle of non-refoulement in article 4. That delegation recalled that reference to humanitarian law was necessary.

Article 6

Jurisdiction[70]

1. Each State Party shall take legislative measures to establish its jurisdiction over the offences mentioned in article 4 of the present Protocol in accordance with article 9 of the Convention.

2. If more than one State Party intends to resume jurisdiction over an alleged offender in accordance with paragraph 1 of this article and with article 9 of the Convention, the States Parties concerned shall consult each other with a view to renouncing jurisdiction in order to render possible proceedings in the territory of the State Party most directly affected by the commission of the smuggling of migrants.[71]

II. Smuggling[72] of migrants by sea[73]

Article 7

Cooperation and mutual assistance

1. States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in conformity with international law.[74, 75]

2. A State Party that has reasonable grounds to suspect that a vessel, which is flying its flag or claiming its registry, which is without nationality or which, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned, is engaged in the smuggling of migrants by sea may request the assistance of

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[70] It is understood that the provisions on extradition, mutual legal assistance and other forms of international cooperation in criminal matters that would appear in the Convention would apply to the Protocol. In addition, it is understood that any provisions relating to human rights of detainees should be contained in the draft Convention. However, there is a need to review the question of whether any additional provisions would be necessary in view of the specific nature of the Protocol.

[71] Some delegations were of the view that this paragraph should be made consistent with article 9 of the draft Convention.

[72] Concerns about the use of the term "smuggling" are discussed in the footnote to the word "smuggling" in the title of the Protocol above (footnote 1).

[73] In the version of the draft Protocol contained in document A/AC.254/4/Add.1/Rev.2, this chapter included only one article (article 7). For the sake of clarity, the delegations of Austria and Italy proposed the structure followed in the present version.

[74] The language of this provision has been derived from article 17, paragraph 1, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the 1988 Convention) and from paragraph 8 of the interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea of the International Maritime Organization (IMO) (MSC/Circ.896, annex).

[75] At the sixth session of the Ad Hoc Committee, a specific reference to the United Nations Convention on the Law of the Sea and other international instruments was deleted at this point. There was general agreement that the reference should include both customary and conventional international law and not just specific instruments to which not all States were parties. Some delegations expressed concern about this and wanted the words "and in particular the United Nations Convention on the Law of the Sea" added after the reference to international law.

other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance within the means available to them.[76, 77]

Article 7 bis

Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another State Party is engaged in the smuggling of migrants may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel.[78] The flag State may authorize the requesting State, *inter alia*:

(a) To board the vessel;[79]

(b) To inspect the vessel; and

(c) If evidence is found that the vessel is engaged in the smuggling of migrants, to take appropriate action with respect to the vessel, persons and cargo[80] on board, as [expressly][81] authorized by the flag State [in accordance with article 7 *ter* of this Protocol];[82, 83]

2. A State Party that has taken any action in accordance with paragraph 1 of this article shall promptly inform the flag State concerned of the results of that action.[84]

3. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made pursuant to paragraph 1 of this article.[85]

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[76] The language of this provision has been derived from article 17, paragraph 2, of the 1988 Convention and from paragraph 11 of the IMO interim measures. During the sixth session of the Ad Hoc Committee, it was decided to replace the words "as is reasonable under the circumstances" with the words "within the means available to them", to bring the language closer to article 17, paragraph 2, of the 1988 Convention.

[77] At the sixth session of the Ad Hoc Committee, some delegations proposed moving this provision from article 7 to article 7 *bis*. Discussion on this question was deferred pending final determination of the content of the articles.

[78] The language of this provision has been derived from article 17, paragraph 3, of the 1988 Convention.

[79] At the sixth session of the Ad Hoc Committee, several delegations expressed concern about the exact meaning of the word "board" and its translation into other languages. At issue was the extent to which use of the term would authorize the boarding of a vessel against the will of the person in charge of it. The word "board" appears in both the 1988 Convention and the IMO interim measures.

[80] At the sixth session of the Ad Hoc Committee, several delegations expressed concern about the reference to "persons and cargo" in this context.

[81] At the sixth session of the Ad Hoc Committee, several delegations proposed that the word "explicitly" or the word "expressly" be added at this point for greater clarity. Other delegations expressed reservations about the possible effect on domestic law.

[82] Compromise text proposed by the Chairperson at the sixth session of the Ad Hoc Committee in response to the proposal of a number of delegations that a cross-reference to the safeguard provisions of article 7 *ter*, paragraph 3 (a), be added to this article.

[83] The language of this provision has been derived from article 17, paragraph 4, of the 1988 Convention.

[84] The language of this provision has been derived from article 17, paragraph 8, of the 1988 Convention and from paragraph 12 of the IMO interim measures.

[85] The language of this provision has been derived from article 17, paragraph 7, of the 1988 Convention and from paragraph 14 of the IMO interim measures.

4. A flag State may, consistent with article 7, paragraph 1, of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken [, including the use of force].[86] A State Party shall take no additional actions without the express authorization of the flag State, except those necessary to relieve imminent danger [to the lives or safety of persons][87] or those which follow from relevant bilateral or multilateral agreements.[88]

5. States Parties shall designate an authority or, where necessary, authorities:[89]

(a) To receive information on the smuggling of migrants mentioned in paragraph 3 of this article;[90] and

(b) To receive and respond as quickly as possible to requests for assistance, confirmation of registry or of the right of a vessel to fly their flags and authorization to take appropriate measures.[91, 92]

6. When there are reasonable grounds[93] to suspect that a vessel is engaged in the smuggling of migrants by sea and it is concluded in accordance with the international law of the sea that the vessel is without nationality or has been assimilated to a vessel without

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[86] The language of this provision has been derived from article 17, paragraph 6, of the 1988 Convention. At the sixth session of the Ad Hoc Committee, a number of delegations expressed concern that the reference to "the use of force" in this provision might serve as an authorization or encouragement to use force. Those delegations wanted the reference deleted. Other delegations expressed the view that the actual effect was to limit the use of force, by ensuring that this could only occur where authorized by the State whose flag the ship was entitled to fly or in which it was registered and wanted the phrase retained. Several possible alternative texts were considered, but none found sufficient consensus.

[87] At the sixth session of the Ad Hoc Committee, many delegations expressed the view that the words "imminent danger" were too broad and required clarification. Some delegations sought clarification that the danger referred to was "to life". Others expressed a preference for limiting this provision to cases where there was danger to the lives of migrants. Others pointed out that cases could arise where the lives of crew members or boarding parties exercising their powers under paragraph 1 (a) might be endangered and that the wording should provide for this.

[88] The language of this provision has been derived from paragraph 13 of the IMO interim measures. Some delegations expressed concern that the exceptions did not cover all the operational scenarios that might arise.

[89] This text was revised at the sixth session of the Ad Hoc Committee to address the concerns of some delegations that two separate authorities might be needed. The delegation of Spain proposed that the words "... an authority, or where necessary, authorities" be replaced with the words "... a central authority, or where necessary, central authorities". This question will be addressed at a later date, in conjunction with discussions on the articles of the draft Convention that deal with central authorities and similar matters.

[90] At the sixth session of the Ad Hoc Committee, some delegations expressed the view that this provision should be moved to article 10 (concerning information matters). Its current placement was agreed pending future discussions.

[91] The language of this provision has been derived from article 17, paragraph 7, of the 1988 Convention and from paragraph 21 of the IMO interim measures. At the sixth session of the Ad Hoc Committee, it was noted that the substance of this provision overlapped that of article 14, paragraph 8 (on appointment of central authorities for mutual legal assistance), of the draft Convention and should therefore be re-examined once that provision had been finalized.

[92] At the sixth session of the Ad Hoc Committee, the words "as quickly as possible" were added at the request of several delegations.

[93] At the sixth session of the Ad Hoc Committee, concerns were expressed about the standard set by the language of the Spanish text. It was agreed that this would be made to match the English-language standard of "reasonable grounds". Similar changes would be made in the glossary in preparation by the Secretariat if necessary.

nationality, States Parties shall board and inspect[94] the vessel, as necessary. If evidence of involvement in the smuggling of migrants is found during such inspection,[95] States Parties shall take appropriate measures in accordance with relevant domestic and international law.[96, 97]

Article 7 ter

Safeguard clauses

1. When there is evidence that a vessel is engaged in the smuggling of migrants and a State Party takes action in accordance with this Protocol[98] and relevant domestic and international law, that State Party shall ensure the safety and the humane treatment of the persons on board and shall ensure that any action taken with regard to the vessel is environmentally sound.[99]

2. If any measures are taken against a vessel suspected of being engaged in the smuggling of migrants by sea, the State Party concerned shall take due account of the need not to endanger the safety of human life at sea, the security of the vessel or its cargo, or to prejudice the commercial and/or legal interests of the flag State or any other interested State[100] [ensure that the safety of human life at sea is not endangered and that the security of the vessel and its cargo and the commercial or legal interests of the flag State or any other interested State or party are not prejudiced].[101]

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[94] At the sixth session of the Ad Hoc Committee, to respond to concerns about the meaning of "to board" in various languages, the wording was changed to read "to board and inspect".

[95] At the sixth session of the Ad Hoc Committee, the reference to "evidence of involvement in smuggling" was added for greater consistency with terminology elsewhere in the draft Protocol.

[96] The language of this provision has been derived from paragraph 16 of the IMO interim measures.

[97] At the sixth session of the Ad Hoc Committee, it was noted that the substance of this provision overlapped that of article 14, paragraph 8 (on appointment of central authorities for mutual legal assistance) of the draft Convention and should therefore be re-examined once that provision had been finalized.

[98] At the sixth session of the Ad Hoc Committee, there was discussion of whether the safeguard provisions of article 7 *ter* should be made applicable to actions taken with respect to any provision of the entire Protocol. The preference of delegations was for application throughout the Protocol and this was adopted for the purpose of future discussion, bearing in mind that an ultimate decision would depend on the drafting of the final provisions and might have to be reconsidered at that point.

[99] The language of this provision was originally derived from paragraph 17 of the IMO interim measures. At the sixth session of the Ad Hoc Committee, a group of delegations redrafted the provision to respond to concerns about terminology and the relationship between former subparagraphs (a) and (b). The group also expressed the view that the new text should become article 7 *ter*, paragraph 2, with the existing paragraph 2 of article 7 *ter* becoming paragraph 1. The plenary agreed to adopt the above text, with its placement to be determined later.

[100] The language of this provision was originally derived from article 17, paragraph 5, of the 1988 Convention and from paragraph 7 of the IMO interim measures. During the sixth session of the Ad Hoc Committee, several delegations requested that the wording be changed to "take due account" for greater consistency with article 17, paragraph 5. The replacement of the word "and" with the word "or" and repunctuation of the list were done for the same reason and to ensure that all of the phrases were included in the list.

[101] This new text addresses concerns expressed by China and some other delegations at the sixth session of the Ad Hoc Committee. The text expresses the need to protect life at sea as a positive obligation and incorporates a reference to the interests of third parties who are not States, as proposed. The redrafting was made necessary by the positive construction of the wording dealing with life at sea.

2 *bis*. Where measures taken pursuant to this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.[102]

3. States Parties shall take, adopt or implement such measures in conformity with international law with due regard to:

(a) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel; and

(b) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.[103, 104]

4. Any action taken at sea pursuant to articles 7 to 7 *quater* of this Protocol shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.[105]

5. Measures taken, adopted or implemented pursuant to this Protocol[106] shall be in conformity with international law.[107]

Article 7 quater

Application

States Parties shall consider entering into bilateral or regional agreements to facilitate cooperation in applying appropriate, efficient and effective measures to prevent and suppress the smuggling of migrants by sea.[108] States Parties shall also encourage the

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[102] Proposal of China at the sixth session of the Ad Hoc Committee. The text is taken from article 110, paragraph 3, of the United Nations Convention on the Law of the Sea. Note that references to "ship" in that text are replaced with "vessel" for consistency with the other provisions of the draft Protocol. References to unfounded "suspicions" in that text have been changed because there is no prior reference to suspicion in this article.

[103] At the sixth session of the Ad Hoc Committee, the delegation of Singapore proposed replacing the text of article 7 *ter*, paragraph 3, with the following text, based on article 17, paragraph 11, of the 1988 Convention:

"3. Any action taken in accordance with this article shall take due account of the need not to interfere with or to affect:

"(a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; and

"(b) The authority of the flag State to exercise jurisdiction and control in administration, technical and social matters involving the vessel."

[104] The language of this provision has been derived from article 17, paragraph 11, of the 1988 Convention and from paragraph 6 of the IMO interim measures.

[105] The language of this provision has been derived from article 17, paragraph 10, of the 1988 Convention and from paragraph 20 of the IMO interim measures.

[106] See footnote 29 above concerning the application of this article throughout the Protocol.

[107] The language of this provision was originally derived from paragraph 5 of the IMO interim measures. At the sixth session of the Ad Hoc Committee, the expanded reference to specific international legal instruments was deleted for the same reasons as given with respect to article 7, paragraph 1 (see footnote 8 above). Several delegations indicated a preference for the greater certainty of listing the major relevant international legal instruments, in particular the United Nations Convention on the Law of the Sea.

[108] The language of this provision has been derived from article 17, paragraph 9, of the 1988 Convention and from paragraph 9 of the IMO interim measures.

conclusion of operational arrangements in relation to specific cases (ad hoc arrangements).[109]

III. Cooperation, prevention and other measures[110]

Article 8

Compliance measures and arrangements

1. States Parties shall adopt every legislative and administrative measure needed in order to comply with the obligations deriving from this Protocol, having respect for the principles of sovereignty, territorial integrity and non-interference in internal affairs.

2. States Parties shall consider the conclusion of bilateral or regional agreements or understandings aimed at:

(a) Establishing the most appropriate and effective measures to prevent, combat and limit the illegal smuggling of migrants, in accordance with this Protocol; or

(b) Enhancing the provisions of this Protocol among themselves.

Article 9

Additional legislative and administrative measures

States Parties shall take such additional legislative or other measures as they consider appropriate to prevent means of transportation operated by commercial carriers from being used in the commission of offences established under article 4 of this Protocol. Such measures shall include, in appropriate cases, fines and forfeiture to ensure that carriers, including any transportation company, or the owner or operator of any vessel or vehicle, screen all passengers to see that they have valid passports and visas, if required, or any other documentation necessary for legal entry into the receiving State.

Article 10

Information

1. States Parties shall take measures to ensure that they provide or strengthen information programmes to increase public awareness of the fact that the smuggling of migrants is a criminal activity frequently perpetrated by criminal organizations for profit and that it poses serious risks to the migrants involved.

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[109] The language of this provision has been derived from paragraph 10 of the IMO interim measures.

[110] There was a brief discussion at the sixth session of the Ad Hoc Committee about whether articles 8-11 were common with provisions of the draft Convention, and, if so, whether they were needed in the draft Protocol itself. No changes were made to the text, but several new proposals were submitted for consideration. The delegation of Mexico proposed new text for articles 8-11 (A/AC.254/L.96). The delegation of Germany proposed to make the application of article 9 discretionary rather than mandatory (A/AC.254/L.97). The delegation of Argentina proposed a new chapter III of the Protocol, dealing with trafficking in migrants by land. It was decided that further discussion of these articles would be deferred until texts for the corresponding provisions of the draft Convention had been agreed to (A/AC.254/L.99).

2. Pursuant to article 22 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from becoming victims of criminal organizations.

3. Without prejudice to articles 19 and 20 of the Convention, States Parties shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, in conformity with their respective national laws and applicable treaties or arrangements, relevant information on matters such as:

(a) Embarkation and destination points, as well as routes, carriers and means of transportation, known or suspected to be used by criminal organizations engaged in the smuggling of migrants;

(b) The identity and methods of organizations or criminal associations known or suspected to be engaged in the smuggling of migrants;

(c) The authenticity and proper form of travel documents issued by a State Party and advice concerning the theft or related misuse of blank travel or identity documents;

(d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction, acquisition or other misuse of travel or identity documents used in the smuggling of migrants and ways of detecting them;

(e) Legislative experiences, practices and measures to prevent, combat and eradicate the smuggling of migrants; and

(f) Relevant scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the smuggling of migrants and to prosecute those involved.

Article 11

Prevention

1. States Parties shall adopt such measures as may be necessary to detect and prevent the smuggling of migrants between their respective territories and that of other States Parties, by strengthening border controls, including by checking persons and travel or identity documents, and, where appropriate, by inspecting and seizing vehicles and vessels.

2. Without prejudice to article 19 of the Convention, States Parties shall consider intensifying cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

Article 12

Security and[111] *control of documents*

States Parties shall adopt such measures as may be necessary, in accordance with available means:

[111] Proposal of the delegation of France at the sixth session of the Ad Hoc Committee.

(a) To ensure that travel or identity documents issued by them are of such quality that they cannot be easily misused and cannot readily be unlawfully altered, replicated, falsified[112] or issued;[113] and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the States Parties and to prevent their unlawful creation, issuance and use.[114]

Article 13

Legitimacy and validity of documents

States Parties shall, upon request by other States Parties and subject to the domestic laws of the requested State Party, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of the requested State Party and suspected of being used in the smuggling of migrants.[115]

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[112] Proposal of the delegation of Saudi Arabia at the sixth session of the Ad Hoc Committee.

[113] At the sixth session of the Ad Hoc Committee, a number of delegations expressed concern about the cost implications of this provision for developing countries and some delegations proposed making its application discretionary or conditional on available means. Other delegations expressed concern that the reference to "misuse" might be viewed as an attempt to create an obligation to criminalize misuse, which should be dealt with in article 4. As a result, the words "in accordance with available means" were added and the phrase "otherwise misused" was revised and moved to clarify that the provision would call upon States only to prevent misuse by employing high-quality documents. Three delegations continued to seek the deletion of the reference to "misuse". One delegation also sought to replace the words "shall adopt" with the words "are encouraged to adopt".

[114] The revisions to former article 12, paragraph 2, now article 12, subparagraph (b), result from the work of an informal drafting group that met during the sixth session of the Ad Hoc Committee. The new text was not considered prior to adjournment and still requires agreement. A number of delegations had expressed concern about the uncertainty of the previous text and the underlying policy objectives. It emerged that the provision was seen not only as a control on materials and blank or unissued documents, but also as a more general control on the issuance process. Some delegations also expressed concern about the possible cost implications of this provision and asked that a reference to "in accordance with available means" be included. There was general agreement that the underlying objective was to ensure that, once a high standard for the quality of documents was set by subparagraph (a), the more sophisticated documents did not fall into the hands of smugglers at any stage of the production or issuance process. The Chairperson noted that subparagraph (a) dealt with the *quality of documents* and called upon delegations to form an informal drafting group to develop a revised text based on three new topics: the *security of documents* in production and before issuance; the *security or integrity of the issuance process* itself; and the *validation or verification of documents* after they had been issued. Note that the text of this provision parallels the text of article 9 of the draft Trafficking in Persons Protocol, as that text was reorganized at the sixth session. During deliberations on that text, the Ad Hoc Committee decided to incorporate these same changes for purposes of further discussion.

[115] At the sixth session of the Ad Hoc Committee, three changes to this provision were agreed upon. The reference to "Party" was changed to "State Party" (proposal of the delegation of the United Kingdom of Great Britain and Northern Ireland), the words "without undue or unreasonable delay" were replaced with the words "within a reasonable time" (proposal of the delegation of Morocco) and the reference to "documents issued" was expanded to read "issued or purported to have been issued" (proposal of the delegation of Canada). Note that the text of this provision parallels the text of article 6, paragraph 3, of the Trafficking in Persons Protocol, as that text was reorganized at the sixth session. During deliberations on that text, the Ad Hoc Committee decided to incorporate these same changes, for purposes of further discussion.

Article 14

Training

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the smuggling of migrants and in treating smuggled migrants.

2. States Parties shall cooperate with each other and with competent international organizations, as appropriate, to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the smuggling of migrants and to protect the rights of victims of such [smuggling] [trafficking] and illegal transport. Such training shall include, *inter alia*:

(a) Improving the security and quality of travel documents;

(b) Recognizing and detecting fraudulent travel or identity documents;

(c) Gathering criminal intelligence, especially relating to the identification of organizations or criminal associations known or suspected to be engaged in the smuggling of migrants, the methods used to transport smuggled migrants, the misuse of travel or identity documents for smuggling migrants and the means of concealment used in the smuggling of migrants;

(d) Improving procedures for searching for and detecting, at conventional and non-conventional points of entry and exit, concealed, undocumented or improperly documented persons; and

(e) Recognizing the need to provide humane treatment to and protect the human rights of migrants.

3. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the smuggling of migrants. States Parties with relevant expertise should consider providing technical assistance to States that are frequently used as States of origin or as transit States for the smuggling of migrants.

[*Article 15*

Return of smuggled migrants[116]

1. States Parties agree to facilitate and accept, without delay, the return of a person who has been smuggled contrary to the terms of this Protocol who is a national of that State Party or who had the right of abode in the territory of that State Party at the time of entry into the receiving State.

2. At the request of the receiving State Party, States Parties shall, without undue or unreasonable delay, verify whether a person who has been smuggled contrary to the terms of this Protocol is a national of the requested State Party.

3. In order to facilitate the return of a person smuggled contrary to the terms of this Protocol without proper documentation, the State Party of whom the person is a national or in which the person had the right of abode at the time of entry into the receiving State shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person's readmission into its territory.]

IV. Final provisions

Article 16

Implementation[117]

1. For the purpose of examining the progress made by the States Parties in achieving the implementation of the obligations undertaken in the present Protocol, the States Parties will provide periodic reports to the Conference of the Parties to the Convention.

2. The States Parties will provide such reports together with the reports submitted in accordance with article 23 of the Convention.

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[116] At the sixth session of the Ad Hoc Committee, a majority of delegations supported retaining this article, subject to further discussion. Amendments were proposed by the delegations of France (case-by-case implementation), the Philippines (new paragraph emphasizing rights of migrants and their status as victims) and Ukraine (limitation of paragraph 1 to persons who were nationals or had a right of permanent abode in the source country), but there was no general agreement in support of any of these proposals. Substantively, some delegations expressed the view that making provision for the return of migrants was necessary as a means of deterring migrants and organized criminal groups and was necessary to ensure the right of the migrants themselves to return to their place of origin. Other delegations proposed either deletion or modification on the basis that the provision was beyond the mandate given to the Ad Hoc Committee by the General Assembly and that it unfairly placed the burden on the migrants themselves. One suggested compromise was that the provision might be retained, but with language that would ensure that migrants could only be returned voluntarily and that their rights of due process were protected. The Chairperson advised delegations to work unofficially on new text, which would have only the status of a proposal from one or more sponsoring delegations at a future session.

[117] One delegation proposed the deletion of this article because the issue of implementation and reporting requirements would be covered by the Convention.

Article 17

Settlement of disputes[118, 119]

1. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time [ninety days] shall, at the request of one of those Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of [signature,] ratification [, acceptance] or [approval] of this Protocol, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 18

Signature, ratification, acceptance, approval, accession and reservations

1. This Protocol shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

2. The present Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Option 1

[3. No reservations may be made in respect of any provision of this Protocol.]

[118] The text of these final provisions is identical to the text of the corresponding provisions of the draft Convention and is reproduced here in accordance with a decision made by the Ad Hoc Committee at its sixth session (A/AC.254/23) and without prejudice to their content, which is still under negotiation. Only necessary editorial changes have been made to the text. For issues related to these provisions, see the footnotes to articles 25, 26 and 27-30 of the draft Convention.

[119] At the sixth session of the Ad Hoc Committee, it was agreed that various provisions, including article 5, paragraph 2, and portions of article 7 *ter*, would be revised and added to the final provisions as a "saving clause" applicable to the entire Protocol. Details of the text were deferred pending discussion of the final provisions.

Option 2

[3. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1969.[120]]

[4. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.]

[5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]

6. This Protocol is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 19

Entry into force

1. The present Protocol shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...] instrument of ratification, acceptance, approval or accession.

2. For each State Party ratifying, accepting, approving or acceding to the Protocol after the deposit of the [...] instrument of such action, the Protocol shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

Article 20

Amendment

1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

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[120] United Nations, *Treaty Series*, vol. 1155, No. 18232.

Article 21

Denunciation

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 22

Languages and depositary

1. The Secretary-General of the United Nations is designated depositary of the present Protocol.

2. The original of the present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.